

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD  
WESTERN WASHINGTON REGION  
STATE OF WASHINGTON

WILLIAM H. WRIGHT,

Petitioner,

v.

SAN JUAN COUNTY,

Respondent.

Case No. 14-2-0005

**ORDER ON MOTION TO DISMISS**

This matter comes before the Board pursuant to San Juan County's Motion to Dismiss Issues 1-7 for Lack of Jurisdiction.<sup>1</sup> The Petitioner filed a response on May 27, 2014.<sup>2</sup>

**I. BACKGROUND AND DISCUSSION**

San Juan County adopted four separate ordinances in early 2013 updating its designation and protection of critical areas. Numerous petitions for review were filed challenging the adoption of those ordinances, including one by the petitioner in this matter, William H. Wright. The Board issued a Final Decision and Order on September 6, 2013 in which it determined one of the petitioners had met its burden of proof to establish GMA violations. As a consequence, the matter was remanded to the County to take action to achieve compliance. On March 5, 2014, the County adopted Ordinance No. 2-2014, the County's compliance legislation. It is that ordinance which the petitioner in this matter now challenges.

The County assembled a vast amount of scientific information during the years-long process leading up to the adoption of the four critical area ordinances in early 2013. Dr. Paul Adamus of Adamus Resource Assessment, Inc., and others, were retained by the

<sup>1</sup> Filed May 16, 2014.

<sup>2</sup> Petitioner's Response to Respondent's Motion to Dismiss.

1 County to, among other things, prepare a synthesis of the assembled scientific information.  
2 That synthesis was then presented to the County and adopted by it in early 2011.

3 The County's motion requests that the Board dismiss all seven issues raised by the  
4 Petitioner. The primary basis upon which the County supports its motion is the allegation  
5 that the Petitioner has failed to properly invoke the jurisdiction of the Board.<sup>3</sup> In the  
6 Petitioner's response, he alleges the Board in fact has jurisdiction and that the County did  
7 not object to his framing of the seven issues as set forth in the Prehearing Order.  
8

9 The Board will address the issues in the order they were presented:

10 **Issue 1**

11 Whether San Juan County Best Available Science Synthesis fails to comply with the  
12 assessment criteria for determining which information is the "best available science"  
13 as required by WAC 365-195-905 (Characteristics of a valid scientific process)

14 **Issue 2**

15 Whether Dr. Paul Adamus is a qualified expert per WAC 365-195-905(4).

16 RCW 36.70A.170(1)(d) requires counties and cities to designate critical areas:

17 (1) On or before September 1, 1991, each county, and each city, shall  
18 designate where appropriate:

19 (d) Critical areas.

20  
21 RCW 36.70A.172(1) includes the following related to the process for compliance with  
22 RCW 36.70A.170(1)(d):

23 In designating and protecting critical areas under this chapter, counties and  
24 cities shall include the best available science in developing policies and  
25 development regulations to protect the functions and values of critical areas.

26 Issues 1 and 2 allege violations of an administrative code section, specifically WAC  
27 365-195-905 regarding Issue 1 and WAC 365-195-905(4) regarding Issue 2. Chapter 365-  
28 195 of the Washington Administrative Code was adopted with the goal of assisting local  
29 jurisdictions in identifying and including the best available science when adopting policies  
30 and regulations regarding critical areas. The rules set out in that chapter are designed to  
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<sup>3</sup> Citing RCW 36.70A.280, *Crosby v. Spokane County*, 137 Wn.2d 296, 300 and *Dougherty v. Dep't of Labor & Indus.*, 150 Wn.2d 310, 319.

1 assist jurisdictions to comply with the Growth Management Act. See WAC 365-195-900.  
2 Furthermore, WAC 365-195-905 contains no mandates; rather, it sets out recommended  
3 criteria for determining whether information constitutes BAS.

4 Furthermore, as the County argues, the Board's jurisdiction is established by RCW  
5 36.70A.280. That statute grants the Board jurisdiction to consider challenges to adopted  
6 comprehensive plans, development regulations, and their permanent amendments. The  
7 2011 BAS Synthesis did not constitute a comprehensive plan, a development regulation, or  
8 an amendment of same.<sup>4</sup> Similarly, the qualifications of Dr. Adamus do not fall within those  
9 parameters.

10  
11 The Petitioner is unable to establish a violation of WAC 365-195-905 in regards to  
12 Issues 1 and 2.

13 **Issue 3**

14 Whether Buffers are required to protect critical areas as adjudicated by the WA  
15 Supreme Ct 76339-9 161 Wn.2d 415, TRIBAL CMTY. v. HEARINGS BD.

16 This issue is a mere statement. It fails to assert a GMA violation. How the Supreme  
17 Court's decision in *Swinomish*<sup>5</sup> relates to a GMA violation in this matter is unknown. RCW  
18 36.70A.290(1) requires a detailed statement of issues presented for resolution by the Board  
19 and that is lacking here. As previously stated, the Board's jurisdiction, at least in regards to  
20 this matter, must relate to adopted comprehensive plans, development regulations, or their  
21 amendments.

22  
23 The Petitioner is unable to establish a GMA violation with his Issue 3.

24  
25 **Issue 4**

26 Whether San Juan County Ordinance 2-2014 AN ORDINANCE REGARDING  
27 CRITICAL AREAS actually cures an existing problem as required by RCW  
28 36.70A.172 and WAC 365-190-040.

29  
30 <sup>4</sup> The Petitioner takes issue with a statement included in the County's motion to the effect that the BAS  
31 Synthesis does not constitute a comprehensive plan or development regulation. The Board suggests the  
32 County's statement is accurate. An appropriate challenge to a jurisdiction's BAS would in most instances  
allege a violation of RCW 36.70A.172. The Board acknowledges the difficulty faced by many pro se petitioners  
in understanding the complexity of chapter 36.70A RCW and the related administrative code sections.

<sup>5</sup> *Swinomish Indian Tribal Cmty. v. W. Wash. Growth Mgmt. Hearings Bd.*, 161 Wn.2d 415.

**Issue 5**

Whether San Juan County Ordinance 2-2014 AN ORDINANCE REGARDING CRITICAL AREAS actually identifies the existing functions and values of the critical area that will be threatened if use of the property is allowed as required by RCW 36.70A.172 and WAC 365-190-040.

RCW 36.70A.172 required San Juan County to include the best available science in amending its critical area policies and development regulations. WAC 365-190-040 is included in the minimum guidelines applicable to the designation and protection of critical areas and describes the process involved in the classification and designation of critical areas. A review of the statute and the rule fail to disclose the requirements alleged to be violated by Issues 4 and 5. Furthermore, as argued by the County, neither issue includes an allegation of a specific provision of Ordinance No. 2-2014 that constitutes a GMA violation, as is required by WAC 242-03-210(2)(c).<sup>6</sup>

The Petitioner is unable to establish a GMA violation with his Issues 4 and 5.

**Issue 6**

Whether San Juan County Comprehensive has been amended for BAS as required by RCW 36.70A.172.

RCW 36.70A.172 in its entirety provides as follows:

(1) In designating and protecting critical areas under this chapter, counties and cities shall include the best available science in developing policies and development regulations to protect the functions and values of critical areas. In addition, counties and cities shall give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries.

(2) If it determines that advice from scientific or other experts is necessary or will be of substantial assistance in reaching its decision, the growth management hearings board may retain scientific or other expert advice to assist in reviewing a petition under RCW 36.70A.290 that involves critical areas.

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<sup>6</sup> WAC 242-03-210: A petition for review shall substantially contain . . . (2) numbered paragraphs stating: (c) A detailed statement of the issues presented for resolution by the board that specifies the provision(s) of the act or other statute allegedly being violated and, if applicable, the provision(s) of the document that is being appealed. (emphasis added)

There is no requirement included in that statute which mandates an amendment of the comprehensive plan.

The Petitioner is unable to establish a GMA violation with his Issue 6.

## Issue 7

Whether Department of Ecology's documents and comments on San Juan county's CAO fail to comply with the assessment criteria for determining which information is the "best available science WAC 365-195-905 (Characteristics of a valid scientific process) **or** meets the BAS requirements of WAC 365-195-905(5).

As previously stated, the rules included in chapter 365-195 WAC are designed to assist local jurisdictions in identifying and including BAS in their critical areas policies and regulations. WAC 365-195-905 contains no mandates, including no mandates directed to the Department of Ecology. Furthermore, Issue 7 does not include an allegation of a specific provision of Ordinance No. 2-2014 that constitutes a GMA violation. WAC 242-03-210. Finally, if this issue is intended to address a concern regarding the public participation process, no relevant GMA statute has been cited.

The Petitioner is unable to establish a GMA violation with his Issue 7.

## ORDER

Based on the foregoing, the Petition for Review, Issue 1 through and including Issue 7, is dismissed and this case is closed.

DATED this 29th day of May, 2014.

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William Roehl, Board Member

**Nina Carter, Board Member**

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Raymond Paolella, Board Member

**Note: This is a final decision and order of the Growth Management Hearings Board issued pursuant to RCW 36.70A.300.<sup>7</sup>**

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<sup>7</sup> Should you choose to do so, a motion for reconsideration must be filed with the Board and served on all parties within ten days of mailing of the final order. WAC 242-03-830(1), WAC 242-03-840. A party aggrieved by a final decision of the Board may appeal the decision to Superior Court within thirty days as provided in RCW 34.05.514 or 36.01.050. See RCW 36.70A.300(5) and WAC 242-03-970. It is incumbent upon the parties to review all applicable statutes and rules. The staff of the Growth Management Hearings Board is not authorized to provide legal advice.